

demonstrates otherwise.^{77/} Establishing exceptions for industry-specific interconnected services, moreover, would recreate the regulatory disparities that Congress specifically sought to eradicate.^{78/}

The Commission also should not enmesh itself in distinctions based on the technical and geographic scope of a service. As a practical matter, limitations based on geographic boundaries or technical capacity do not meaningfully restrict the availability of a particular service.^{79/} Indeed, most mobile services are limited in geographic availability or technical scope when first offered and develop in response to market demand. Creating artificial exceptions based on temporary or self-imposed restrictions would defeat Congress's intent to assure regulatory parity among comparable mobile services and place the Commission on an endless treadmill of reevaluating the regulatory classification of developing services.

^{77/} Thus, by deleting the word "broad" from the phrase "classes of users," Congress sought "to ensure that the definition of commercial mobile services encompasses all providers who offer their services to broad or narrow classes of users." Conference Report at 496 (Emphasis supplied).

^{78/} See House Report at 259-60 (noting the regulatory disparity associated with classifying SMRs as "private" carriers).

^{79/} See, e.g., US West Comments at 19; Vanguard Comments at 7.

D. A Service is a "Commercial Mobile Service" if it Meets the Literal Terms of the Statute or it is the Functional Equivalent of a Commercial Mobile Service

By its terms, the statute defines "private mobile service" to exclude any service that satisfies the literal definition of "commercial mobile service" as well as any service that is functionally equivalent to a commercial mobile service.^{80/} While some commenters urge the Commission to adopt a narrow definition of "commercial mobile service,"^{81/} such a result is inconsistent with the Congressional intent to assure regulatory parity among comparable services.

To expand the definition of "private mobile service," it is necessary to conclude that a service that meets the statutory definition of "commercial mobile service" is nonetheless not a commercial mobile service.^{82/} Yet, it was the classification of interconnected, for profit, and generally available services as "private" that prompted Congress to revise the statutory scheme governing commercial mobile services.^{83/} Determining "functional equivalence" based on whether the service utilizes frequency reuse or other existing commercial mobile service technologies,

^{80/} 47 U.S.C. § 332(d)(3); Conference Report at 496.

^{81/} E.g., NABER Comments at 11; Geotek Comments at 6-7; RAM Mobile Data Comments at 5; Nextel Comments at 13-14.

^{82/} Cf. Conference Report at 496 (directing the Commission to include "neither a commercial mobile service nor the functional equivalent of a commercial mobile service"); see US West Comments at 7; Vanguard Comments at 8; Comments of the National Association of Regulatory Utility Commissioners, GN Docket No. 93-252, at 18.

^{83/} House Report at 259-60; see McCaw Comments at 20.

as some have proposed,^{84/} would simply encourage carriers to avoid common carrier regulation by developing alternative technological means to offer services that are comparable to commercial mobile services. Accordingly, a service that meets the statutory definition or that is, in fact, the functional equivalent of a commercial mobile service should be defined and regulated as a "commercial mobile service."

Conclusion

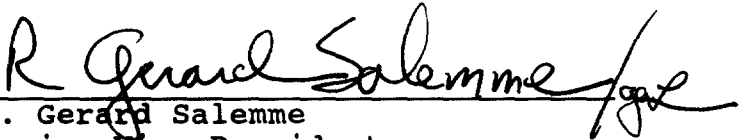
For the foregoing reasons, the record in this proceeding supports the adoption of rules that, consistent with legislative intent, eliminate regulatory disparities among providers of commercial mobile services and treat comparable services equally. Given the competitive nature of the nascent market for commercial mobile services, the Commission should minimize the regulatory burdens on all commercial mobile service providers and block the

^{84/} E.g., RAM Mobile Data Comments at 6 n.6; Nextel Comments at 12.

imposition of state impediments to the nationwide availability of mobile services.

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